

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOHN JAMESON,

Petitioner-Appellant,

v

CITY OF NORTHVILLE,

Respondent-Appellee.

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UNPUBLISHED

April 23, 2013

No. 308961

Tax Tribunal

LC No. 00-427234

Before: BECKERING, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

Petitioner, John Jameson, appeals as of right from a Michigan Tax Tribunal (MTT) order dismissing his appeal of 2011 property assessments for three parcels of commercial property in respondent city of Northville. The MTT dismissed the appeal for lack of jurisdiction because petitioner did not timely file his petition pursuant to MCL 205.735a. Because the language of MCL 205.735a(7)(a) concerning the filing of a petition by way of the United States postal service is clear and unambiguous, we must affirm.

Petitioner owns three parcels of commercial property in Northville and disputed respondent's assessment of the properties for the 2011 tax year. According to petitioner, he petitioned the MTT to lower the assessments by sending a petition and a \$450 filing fee to the MTT by first-class mail on May 23, 2011. Petitioner also mailed copies of the petition to respondent and other designated recipients. Although respondent and the other designated recipients received copies of the petition by the May 31 deadline, the MTT has no record of receiving the petition or filing fee. In September 2011, the MTT notified petitioner of this problem, and he promptly sent to the MTT copies of the filing documents and a replacement check for the filing fee. Nevertheless, the MTT subsequently dismissed the petition for failure to timely invoke its jurisdiction. Petitioner contends that the MTT erred by finding that his petition was not timely filed where it was mailed by first-class mail before the May 31 filing deadline.

"In the absence of fraud, this Court reviews a decision of the Tax Tribunal to determine whether the tribunal committed an error of law or adopted a wrong legal principal." *W A Foote Mem Hosp v City of Jackson*, 262 Mich App 333, 336; 686 NW2d 9 (2004). This issue also involves the correct application of MCL 205.735a. "Issues concerning the interpretation and application of statutes are questions of law for this Court to decide de novo." *Id.*

To invoke the MTT's jurisdiction in this assessment dispute, petitioner was required to file his petition by May 31, 2011. See MCL 205.735a(6). Under MCL 205.735a(7), there are alternative methods for filing a petition in the Tax Tribunal. MCL 205.735a(7) provides as follows:

(7) A petition is considered filed on or before the expiration of the time period provided in this section or by law if 1 or more of the following occur:

(a) *The petition is postmarked by the United States postal service on or before the expiration of that time period.*

(b) The petition is delivered in person on or before the expiration of that time period.

(c) The petition is given to a designated delivery service for delivery on or before the expiration of that time period and the petition is delivered by that designated delivery service or, if the petition is not delivered by that designated delivery service, the petitioner establishes that the petition was given to that designated delivery service for delivery on or before the expiration of that time period. [Emphasis added.]

In this case, petitioner does not contend that he delivered the petition in person or gave the petition to a designated delivery service. Rather, he relies on § 35a(7)(a) to argue that the petition was timely filed when it was sent by first-class mail on May 23, 2011, eight days before the May 31 filing deadline. Section 35a(7)(a) provides that a petition “is considered filed on or before the [applicable] time period” if the petition “is postmarked by the United States postal service on or before the expiration of that time period.” Thus, a petition in this case would be timely filed under § 35a(7)(a) if it was postmarked by May 31, even if the MTT did not receive it until after that date. See *Florida Leasco, LLC v Dep't of Treasury*, 250 Mich App 506, 509; 655 NW2d 302 (2002); see also *Grimm v Dep't of Treasury*, 291 Mich App 140, 147-148; 810 NW2d 65 (2010). The problem in this case, however, is that the MTT has no record of ever receiving the petition and petitioner has no evidence of any postmark.

Clearly, MCL 205.735a(7)(a) protects a petitioner from the caprices of mail delivery by designating the postmark date as the date of filing rather than the date the petition is delivered to the MTT. Here, however, the MTT has no record that the petition was ever received, and petitioner is, therefore, unable to establish that the petition was “postmarked by the United States postal service on or before the expiration of [the applicable] time period.” Without evidence of a postmark, petitioner is unable to establish timely filing under § 35a(7)(a). The Legislature did not provide any means of recourse when a petitioner maintains that a package was timely mailed with the United States Postal Service but is unable to present evidence that it was postmarked before the expiration of the applicable time period. This Court “may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.” *Snead v John Carlo, Inc.*, 294 Mich App 343, 355; 813 NW2d 294 (2011). Because petitioner did not provide evidence of a postmark, he failed to establish that the petition was timely filed under § 35a(7)(a). Accordingly, the MTT did not err by determining that petitioner failed to invoke the MTT's jurisdiction.

Petitioner also argues that the MTT erred by denying his motion for reconsideration. However, petitioner's motion merely repeated, nearly verbatim, the issues raised in petitioner's prior motion to set aside the dismissal of his appeal. Because petitioner failed to demonstrate a palpable error by which the MTT was misled, the MTT did not abuse its discretion by denying the motion. See *Luckow v Luckow*, 291 Mich App 417, 423; 805 NW2d 453 (2011); *Signature Villas, LLC v Ann Arbor*, 269 Mich App 694, 705-706; 714 NW2d 392 (2006); MCR 2.119(F)(3).

Affirmed.

/s/ Jane M. Beckering  
/s/ Patrick M. Meter  
/s/ Michael J. Riordan